

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

142

BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 15,614

FILED AUG 19 1960

Joseph W. Stewart
CLERK

DOROTHY WILLIAMS, Appellant,

v.

DONALD C. HOWARD, Appellee.

Appeal From The United States District Court
For The District Of Columbia

CHESTER H. GRAY,
Corporation Counsel, D. C.,

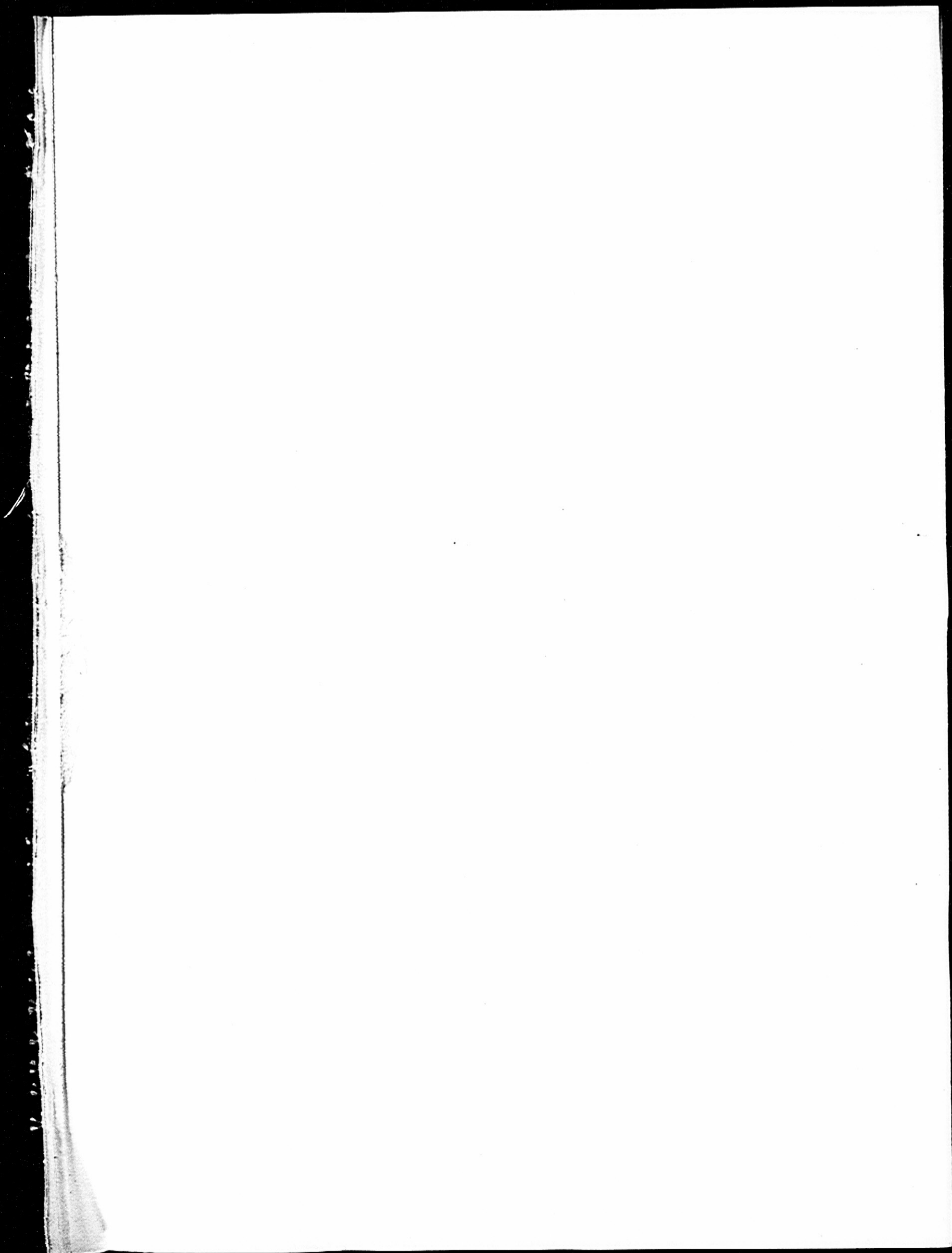
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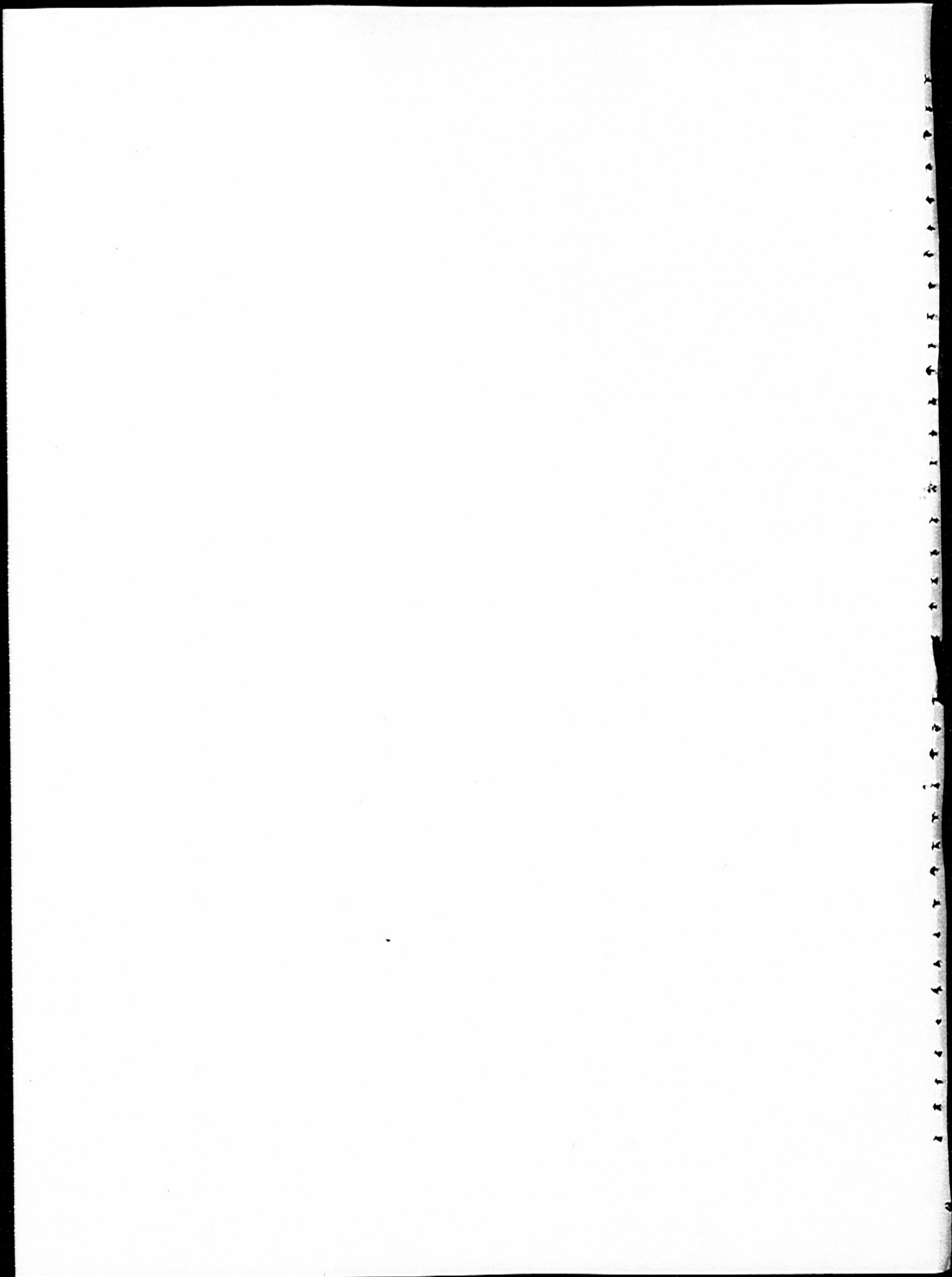
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STATEMENT OF QUESTION PRESENTED

In the opinion of appellee the question presented is:

Has not appellant failed utterly to demonstrate from the record that the trial court erred either in directing a verdict for the appellee or in denying appellant's motion for a new trial?



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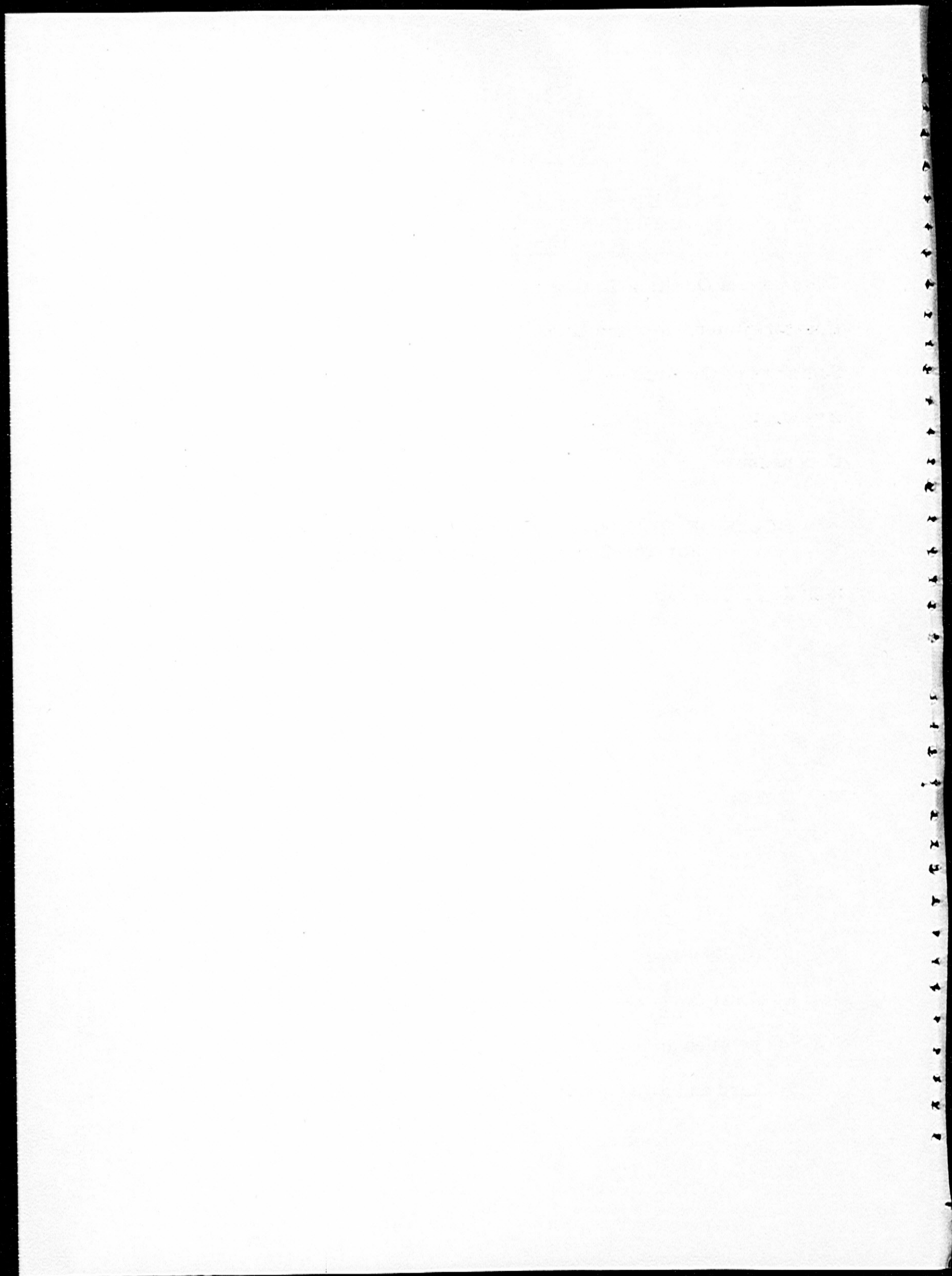
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For The District Of Columbia Circuit
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Rule 16	4
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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 15, 614

DOROTHY WILLIAMS, Appellant,

v.

DONALD C. HOWARD, Appellee.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

Appellant sued appellee and one Nelson Rickard, Jr., in the District Court for personal injuries sustained by her as a result of a collision between an automobile (in which she was a passenger) operated by Rickard and a fire engine operated by appellee (J. A. 3). In her

complaint and pretrial statement appellant alleged that the collision was caused by the negligence of both Rickard and appellee in the operation of their vehicles (J. A. 3, 15-17). Specifically, appellant claimed that " * * * Rickard was negligent in that he knew or should have known [of] the presence of an emergency vehicle and should have taken steps not to collide with it," and that appellee was negligent " * * * in that he should have seen Rickard was not taking proper precautions and should have taken such precautions himself." Appellant charged further that " * * * the siren or gong on the fire engine was not being sounded or lights lit" (J. A. 15).

In his answer and pretrial statement appellee denied that he had operated the fire engine in a negligent manner and asserted that at the time of the accident he was operating the fire engine in his official capacity as a District of Columbia fireman responding to a fire alarm; that the flashing red light and all other lights on the fire engine were in operation; that the siren and bell were sounding; and that he was observing all other requirements of the traffic regulations for emergency vehicles (J.A. 4-6, 15, 17-19). Appellee alleged that the collision was caused by Rickard's negligent operation of his vehicle and his failure to obey the traffic regulations. Appellee cross-claimed against Rickard for indemnification or contribution (J. A. 4-6, 15, 17-19).

Rickard failed to answer the complaint or the cross-claim and a default was entered against him (J. A. 1). Trial to a jury resulted in a directed verdict for appellee on appellant's claim against him and in a verdict for appellant against Rickard for \$40,000 (J. A. 1-2, 19). Appellant's motion for a new trial as to her claim against appellee (J. A. 19-24) was denied (J. A. 2, 26) and this appeal followed (J. A. 2, 27).

SUMMARY OF THE ARGUMENT

Appellant contends only that the question of appellee's negligence should have been submitted to the jury for determination. Appellant has, however, neglected to print in the joint appendix any part of the evidence adduced at the trial. It follows that there is nothing upon which this Court can base a determination that the trial court was plainly wrong in directing a verdict for appellee.

ARGUMENT

Appellant's sole assignment of error is that the trial court incorrectly directed a verdict for appellee. She argues that, upon all the evidence adduced at the trial, the question of appellee's negligence should have been submitted to the jury for determination.

It appears from the statements of counsel in the "argument" and points and authorities in support of appellant's motion for a new

trial (J. A. 19-24) and in appellee's opposition thereto (J. A. 24-26) that at the trial appellant testified and called as witnesses on her behalf appellee, a Dr. Harvey H. Ammerman, and a Sgt. Ralph Summerville of the District of Columbia Fire Department. Appellant has not, however, reproduced in the joint appendix one word of the testimony of any of the witnesses or any of the other evidence.

Notwithstanding this, appellant, in her brief, has set forth in considerable detail her version of the evidence adduced at the trial. In doing so she makes frequent references to a partial transcript of the trial proceedings, to her deposition, and to interrogatories propounded to appellee by appellant and appellee's answers thereto. Of these, only the interrogatories and their answers are contained in the joint appendix. Moreover, there is nothing in the record to indicate that appellant's deposition or the interrogatories and their answers were received in evidence at the trial and, in fact, they were not.

Rule 16 of this Court's Rules requires appellant to print in the joint appendix all material portions of the record which she deems necessary for this Court to read in order to decide the questions presented on appeal. This, appellant has manifestly failed to do. Plainly, this Court cannot, by reading a joint appendix which contains not one word of the evidence adduced at the trial, determine whether, upon all

the evidence, the question of appellee's negligence should have been submitted to the jury for determination. It follows that appellant has clearly failed to establish error by the District Court in directing a verdict for appellee.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the appeal herein should be dismissed or, in the alternative, that the judgment of the District Court should be affirmed.

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UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

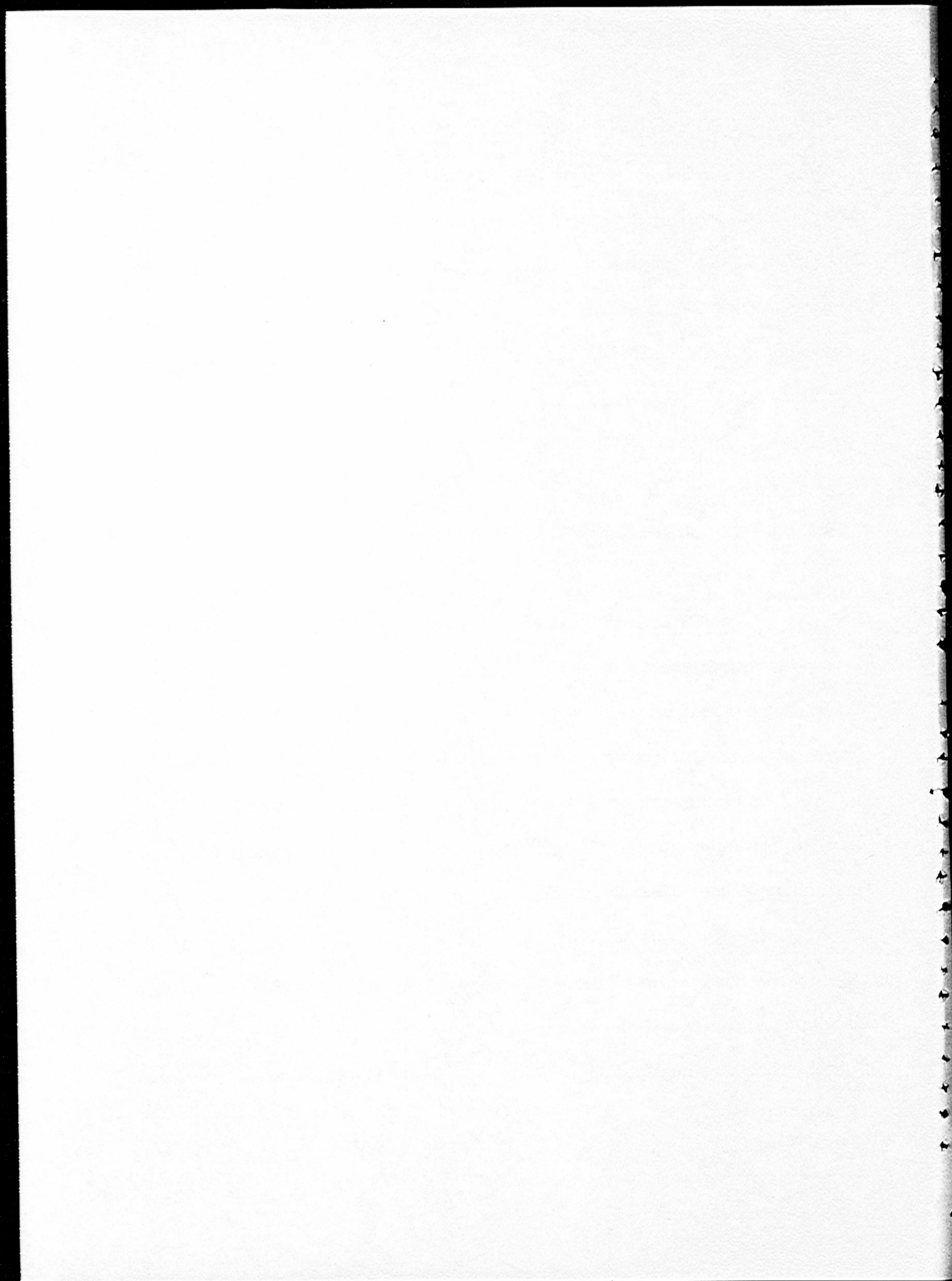
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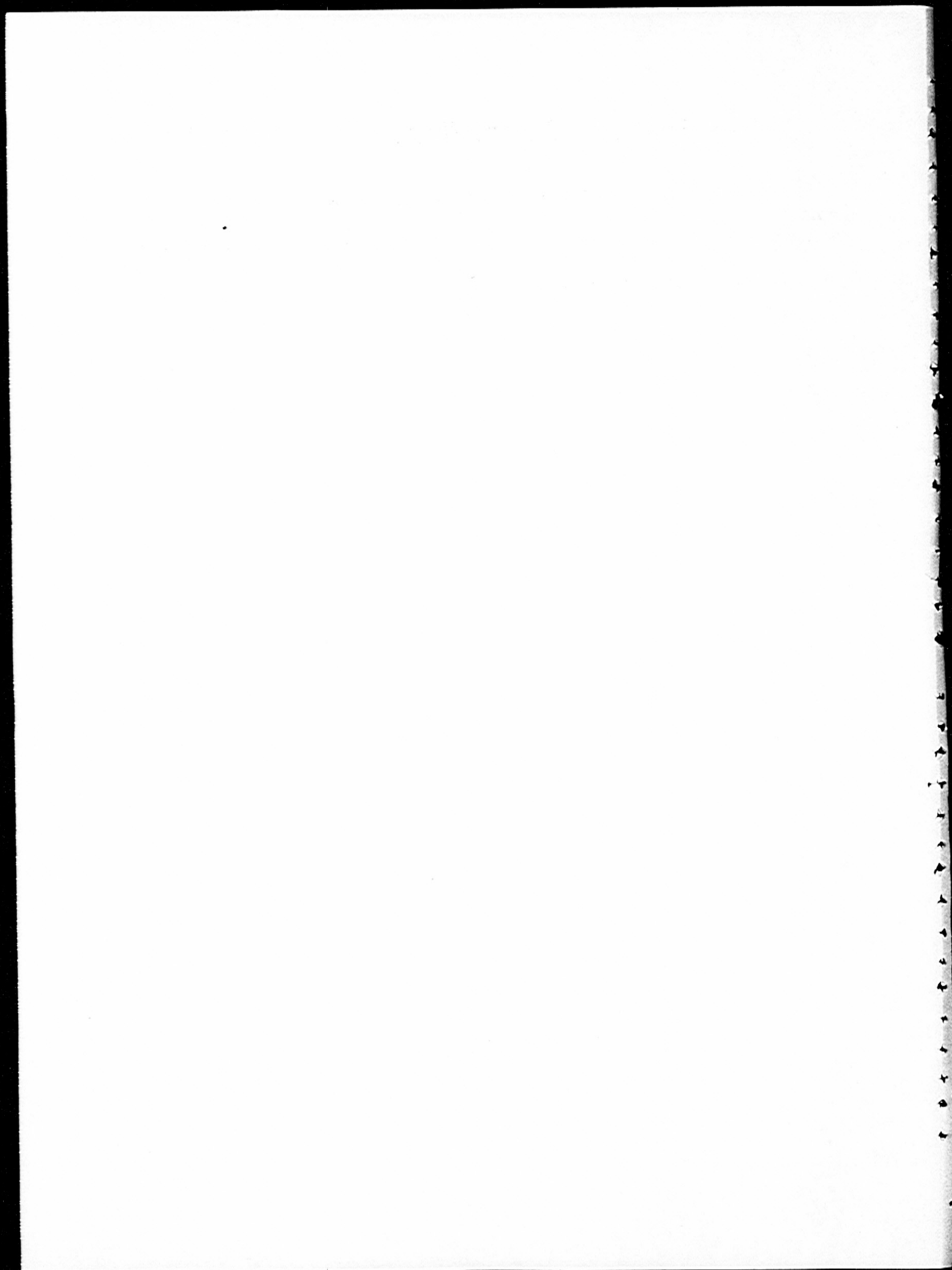
**Appeal From The United States District Court
For The District Of Columbia**

**Attorneys for Appellee,
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SUPPLEMENTAL-STATEMENT OF QUESTION PRESENTED

In the opinion of appellee, the question presented is whether there was sufficient evidence of negligence to go to the jury in a personal injury case in which the court directed a verdict.

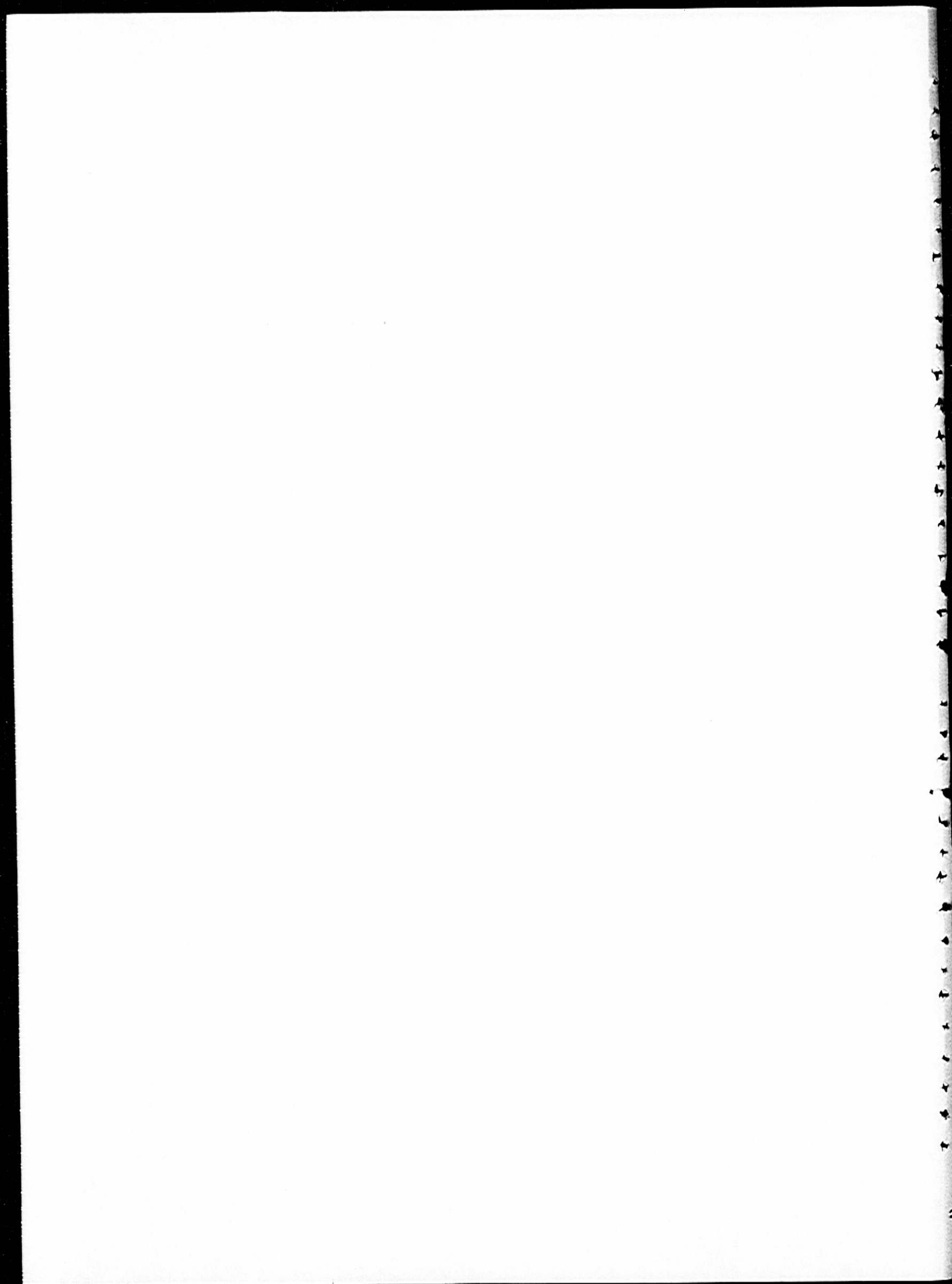


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UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 15,614

DOROTHY WILLIAMS, Appellant,

v.

DONALD C. HOWARD, Appellee.

SUPPLEMENTAL BRIEF FOR APPELLEE

SUPPLEMENTAL-STATEMENT OF THE CASE

Appellant sued appellee and one Nelson Rickard, Jr., in the District Court for personal injuries sustained by her as a result of a collision between an automobile (in which she was a passenger) operated by Rickard and a fire engine operated by appellee (J. A. 3). In her complaint and pretrial statement appellant alleged that the collision was caused by the negligence of both Rickard and appellee in the operation of their vehicles (J. A. 3, 15-17). Specifically, appellant claimed that " * * Rickard was negligent in that he knew or should have known [of] the presence of an emergency vehicle and should have taken steps not to collide with it," and that appellee was negligent " * * in that he should have seen Rickard was

not taking proper precautions and should have taken such precautions himself." Appellant charged further that " * * * the siren or gong on the fire engine was not being sounded or lights lit" (J. A. 15).

In his answer and pretrial statement appellee denied that he had operated the fire engine in a negligent manner and asserted that at the time of the accident he was operating the fire engine in his official capacity as a District of Columbia fireman responding to an alarm of fire; that the flashing red light and all other lights on the fire engine were in operation; that the siren and bell were sounding; and that he was observing all other requirements of the traffic regulations for emergency vehicles (J. A. 4-6, 15, 17-19). Appellee alleged that the collision was caused by Rickard's negligent operation of his vehicle and his failure to obey the traffic regulations. Appellee cross-claimed against Rickard for indemnification or contribution (J. A. 4-6, 15, 17-19).

Rickard failed to answer the complaint or the cross-claim and a default was entered against him (J. A. 1). Trial to a jury resulted in a directed verdict for appellee on appellant's claim against him and in a verdict for appellant against Rickard for \$40,000 (J. A. 1-2, 19). Appellant's motion for a new trial as to her claim against appellee (J. A. 19-24) was denied (J. A. 2, 26). Appellant then appealed, contending that the

issue of appellee's negligence should have been submitted to the jury for determination (J. A. 2, 27).

At trial, appellant testified (J. A. 19-26) and called as witnesses on her behalf the appellee (J. A. 19a-71a, 80a-94a), a Dr. Harvey A. Ammerman (J. A. 71a-80a), and Sgt. Ralph Summerville of the District of Columbia Fire Department, who was seated in the fire engine beside appellee (J. A. 19-26).

In her brief filed in this Court appellant set forth in considerable detail her version of the evidence adduced at the trial. In doing so, she made frequent references to a partial stenographic transcript of the trial proceedings, to her deposition, and to interrogatories propounded to appellee by appellant and appellee's answers thereto. Of these, only the interrogatories and their answers were contained in the joint appendix which appellant filed with her brief (J. A. 6-14). Neither appellant's deposition nor the interrogatories and their answers were received in evidence at the trial.

In the brief heretofore filed herein by the appellee, he set forth the foregoing facts and argued that appellant had, accordingly, failed to present to this Court anything upon which it could decide the question on appeal.

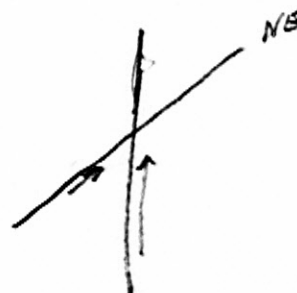
Appellant thereupon moved this Court for permission to add to the joint appendix a 102-page partial stenographic transcript of the trial proceedings containing the testimony of appellee and that of Dr. Ammerman, which, she said, was "inadvertently" omitted therefrom.

By order dated September 3, 1960, this Court permitted appellant to withdraw the joint appendix and to amend it by adding thereto the partial stenographic transcript of the trial proceedings referred to in her motion and an amended appendix.

Appellant thereafter added to the joint appendix not only the 102-page stenographic transcript of the trial proceedings but also selected excerpts from her deposition although, as stated above, the deposition was not received in evidence at the trial.

By order dated September 23, 1960, this Court, upon motion of appellee, granted him permission to file this supplemental brief.

The accident out of which appellant's suit arose occurred at about 9:00 p.m., on February 3, 1956 (J. A. 20a) at the intersection of New York Avenue and Eleventh Street, Northwest (J. A. 34a-35a). Eleventh Street runs in a north-south direction (J. A. 25a), New York Avenue runs in a southwest-northeast direction (J. A. 28a). The Rickard stationwagon in which appellant was a passenger (J. A. 45a) was proceeding northeast on



New York Avenue (J. A. 37a) and the fire engine operated by appellee was proceeding north on Eleventh Street (J. A. 31a). Eleventh Street is seventy feet wide (J. A. 28a) and that portion of New York Avenue southeast of the median strip or island in the center of the roadway is twenty-eight feet wide (J. A. 58a). Eye Street which runs in an east-west direction intersects Eleventh Street just to the south of New York Avenue (J. A. 57a). Both the intersection of Eleventh Street and Eye Street and the intersection of Eleventh Street and New York Avenue are controlled by traffic lights (J. A. 65a). Visibility was good (J. A. 32a). The fire engine was twenty-two feet and six inches long (J. A. 24a) and, without its equipment, weighed approximately 17,500 pounds (J. A. 27a).

Appellee, called as a witness for appellant, testified that immediately prior to the accident he was proceeding north on Eleventh Street just to the right (east) of the center line of the street (J. A. 29a) in response to an alarm of fire at Twelfth and L Streets, Northwest (J. A. 20a). The fire engine was painted red (J. A. 89a) and was equipped with a flashing red light mounted on the cab above the windshield, a siren, a locomotive bell, and a heavy duty muffler (J. A. 88a-90a). The flashing red light was in operation and the siren and bell were being sounded (J. A. 88a-89a). The noise made by the siren was "loud" and the muffler made a "roaring sound" (J. A. 90a).

In the blocks between G and Eye Streets appellee reached a maximum speed of 30 m.p.h. (J. A. 57a, 65a). As he approached the intersection of Eleventh and Eye Streets, he observed that the traffic lights controlling north bound traffic were red at the intersections of Eleventh and Eye Streets and Eleventh Street and New York Avenue (J. A. 31a). He reduced his speed to under 25 m.p.h., and observed that there were cars stopped on Eye Street headed east, cars stopped on New York Avenue headed both east and west, cars stopped on Eleventh Street headed both north and south, and that the intersections were clear (J. A. 31a, 56a, 59a). When the fire engine reached a point just south of Eye Street, (J. A. 58a) appellee observed the Rickard stationwagon "shoot out" (J. A. 66a) from behind and to the north of a car which was stopped on New York Avenue at the southwest corner just to the west of the intersection (J. A. 90a-91a). Appellee said that immediately after the stationwagon came into view: "I did all I could. I hit my brakes, the second I saw him. I threw my wheels to the right to try to avoid him" (J. A. 70a). When appellee first observed the stationwagon he was approximately "three lengths of the fire truck" or about 67 feet away from it (J. A. 60a). The fire engine laid down about 48 feet of skid marks prior to striking the stationwagon (J. A. 41a). The left front fender of the fire engine struck

about the middle of the right side of the stationwagon (J. A. 36a). After the impact the fire engine traveled in a northeasterly direction about 56 feet before coming to a stop and the stationwagon traveled in a northeasterly direction about 62 feet (J. A. 42a-43a). The fire engine was "hooked into" the stationwagon after the impact and both vehicles "went over together" in a northeasterly direction (J. A. 44a). The fire engine had almost come to a stop when the accident happened (J. A. 67a). The speed of the stationwagon was not decreased and its direction of travel was not changed prior to the impact (J. A. 91a) and its speed was principally responsible for the distance the vehicles traveled after the impact (J. A. 68a-69a). The point of impact was about three or four feet east of the center of Eleventh Street, "just off to the right of the streetcar tracks" (J. A. 35a).

SUMMARY OF THE ARGUMENT

Since the evidence adduced at the trial, and all reasonable inferences therefrom, considered in a light most favorable to appellant, were such that fair-minded men could conclude only that appellee was not negligent in the operation of the fire engine, the court below did not err in directing a verdict for appellee.

ARGUMENT

The controlling law is not in dispute and is adequately stated in appellant's brief. A directed verdict in a personal injury case is proper only if the evidence before the jury, and all reasonable inferences therefrom, considered in a light most favorable to the plaintiff, is such that fair-minded men could only conclude that the defendant was not negligent. Plainly, that is the situation here.

In her brief, appellant has based her statement of the case on the testimony of appellee adduced at the trial, on her deposition, and on interrogatories propounded to appellant by appellee and his answers thereto. However, neither appellant's deposition, nor the interrogatories, nor their answers were offered or received in evidence at the trial. Accordingly, appellee submits, evidence of appellee's negligence, if any exists, must be found in his testimony.

Called as a witness by appellant, appellee testified that, at the time of the accident in question, he was operating a fire engine north on Eleventh Street, Northwest, responding to an alarm of fire. The flashing red light on the fire engine was in operation and the "loud" siren and the locomotive bell were being sounded, and had been since the fire engine left the firehouse some four blocks away. As the fire engine approached the inter-

sections of Eleventh and Eye Streets and Eleventh Street and New York Avenue, appellee reduced his speed from about 30 m.p.h. to under 25 m.p.h., and observed that traffic had stopped on all streets and that the intersection was clear. When the fire engine was just south of Eye Street, appellee observed the stationwagon in which appellant was a passenger "shoot out" from behind and to the north of another automobile which had stopped on New York Avenue headed east just to the west of the intersection. Appellee immediately applied his brakes and attempted to turn the fire engine to his right but was unable to avoid striking the stationwagon. After the impact the two vehicles were "hooked together" and the speed of the stationwagon, which was not reduced prior to the collision, carried the vehicles about 60 feet in a northeasterly direction. The skidmarks made by the tires of the fire engine as the brakes were applied prior to the collision were measured by members of the Metropolitan Police Department and found to be 48 feet in length. The wheelbase of the fire engine must, of course, be subtracted from this in order to get the actual distance the fire engine traveled after the brakes were applied prior to the collision.

Certainly, upon this evidence and all reasonable inferences therefrom, even taken in a light most favorable to appellant, no fair-minded person could conclude that appellee was guilty of negligence in the opera-

tion of his vehicle. On the contrary, the only reasonable conclusion possible is that, by failing to yield the right-of-way to an emergency vehicle, the accident was caused solely and exclusively by the negligence of the operator of the stationwagon in which appellant was riding.

CONCLUSION

Upon the foregoing it is respectfully submitted that the District Court did not err in directing a verdict for appellee and that its judgment should, accordingly, be affirmed.

Respectfully submitted,

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